Working to end solitary confinement
for people with psychiatric disabilities

# MHASC

## Mental Health Alternatives to Solitary Confinement

**NYS Legislative Joint Fiscal Committees**

**Mental Hygiene Budget Hearing**
**February 27, 2015**

Mental Health Alternatives to Solitary Confinement (MHASC), a coalition of more than sixty criminal justice and mental health advocacy organizations and hundreds of concerned citizens, formerly incarcerated people, and their family members, has worked for more than ten years to end the practice of placing people with mental illness in solitary confinement (known as Special Housing Units (SHU) or keeplock) and administrative segregation in New York State prisons. We thank the New York State legislature for the opportunity to comment on the need to allocate funding in the 2015-16 Mental Hygiene budget to expand prison mental health care and to provide appropriate monitoring as required by the SHU Exclusion Law. We also urge the legislature to adopt legislation to prohibit the placement of people with mental illness in solitary confinement and to place significant restrictions on its use generally.

### People with Mental Health Needs in NYS Prisons

New York State over-criminalizes behavioral manifestations of mental illness, incarcerates large numbers of people with mental illness in Department of Corrections and Community Supervision (DOCCS) prisons, fails to provide adequate mental health treatment in prison, and too often inflicts abusive conditions that create or exacerbate mental health needs. More than 9,300 people currently in state prison receive treatment from the Office of Mental Health (OMH),[1] meaning that 17.5% of all people incarcerated in DOCCS prisons have been identified as in need of mental health services.[2] From 2007 to 2014, the number of people on the OMH caseload in DOCCS prisons *increased* by 14% at the same time that the total prison population *declined* by 16%. With only 1,200 residential mental health beds in the state prisons, the vast majority of people who receive mental health treatment are in the general prison population, where they receive limited, if any, individual or group therapy.[3]

### The Torture of Solitary Confinement

People with a mental illness have a difficult time while incarcerated, are often not able to control their temper, miss social cues, and too often end up in solitary confinement. The SHU Exclusion Law, which was enacted in 2008 and took effect on July 1, 2011, was an important first step

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[1] According to OMH, 9,311 imprisoned people were on the OMH caseload as of September 30, 2014.
[2] DOCCS reports that it held in its custody 53,092 as of October 27, 2014 and 52,453 as of January 22, 2015.
[3] According to OMH, mental health treatment for individuals in the general prison population consists of being seen monthly by a primary therapist and at least once every three months by a psychiatrist. Half of all people whom OMH designates as having a serious mental illness are in the general prison population.

toward ending the torture experienced by people with mental illness confined to a small cell for 23 to 24 hours a day and subjected to social isolation and sensory deprivation. The law requires that people with serious mental illness who could potentially be confined in SHU for more than 30 days be diverted from SHU to a Residential Mental Health Treatment Unit (RMHTU), except in exceptional circumstances.

However, the law has not resulted in a significant decrease in the number of people with mental illness placed in SHU. In 2014, between 650 and 700 people with mental illness were in SHU on any given day receiving very limited mental health treatment while confined there. Moreover, the torturous conditions of 23-to-24-hour isolation causes psychological damage to individuals with no history of mental illness, and on any given day New York continues to hold over 3,600 people in the SHU and many others in keeplock and administrative segregation, both forms of isolated confinement.[4]

The severe mental pain and suffering caused by solitary confinement led the U.N. Special Rapporteur on Torture to conclude that isolating any person in such conditions beyond 15 days constitutes torture.[5] The Special Rapporteur recommended that solitary confinement of vulnerable populations, such as people with mental illness, for *any* time period be abolished. Yet, in New York, it remains regular practice for DOCCS to hold people in solitary confinement, including people with pre-existing mental health needs, for months and years at a time.

**Overly Punitive Mental Health Units**

In addition, the Residential Mental Health Units (RMHUs), Behavioral Health Unit (BHU), and Therapeutic Behavioral Unit (TBU) – created to be therapeutic alternatives to SHU for people with serious mental illness – remain overly punitive and abusive for many people held there. Many persons have benefited from being in an RMHU, BHU, or TBU, and it is positive they are diverted from SHU to these units. However, many people remain in these alternative disciplinary units for months and years at a time, and people report frequent security staff abuse, excessive force, overuse of disciplinary tickets, and a punitive environment. While people on these units are generally offered programming of two hours or four hours per day, five days a week, in addition to one hour for recreation,[6] that means they are locked down 19 to 21 hours per day during the week in conditions akin to the SHU, and 23 to 24 hours a day on weekends. Moreover, many individuals report to MHASC that they do not even leave their cells for this limited period of time or participate in any programming, either because DOCCS has claimed "exceptional circumstances" to deny them programming[7] or they have refused to participate in recreation or programming often because of the units' punitive nature. Also disturbing and

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[4] DOCCS reported that there were 3,628 people in the SHU on January 22, 2015.

[5] *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/66/268, August 5, 2011, pp. 20-21 available at http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf.

[6] People held in Great Meadow's BHU are only afforded two hours per day out of cell for therapeutic programming, while people held in Marcy's and Five Points' RMHU and Bedford Hills' TBU are afforded four hours of out-of-cell programming.

[7] The SHU Exclusion Law allows DOCCS to deny a person the otherwise required out-of-cell programming under "exceptional circumstances" in which DOCCS finds the person to be an "unacceptable risk to the safety of [incarcerated persons] or staff."

related, people held in the RMHUs, BHU, TBU, and in the other Residential Mental Health Treatment Units (RMHTUs)[8] receive disciplinary tickets and additional SHU time on the unit – a practice disallowed by the SHU Exclusion Law – at rates higher than any other DOCCS prisons.[9] In a recent less than four year period, half or more of the residents on these units received a disciplinary ticket, and 115 residents received 10 or more tickets.[10] These tickets resulted in additional SHU time – as much as 11 additional years of isolated confinement – for individuals on what are intended to be therapeutic units.[11]

**Inadequate Crisis Response, Self-harm, and Suicide**

The combination of the incarceration of large numbers of people with mental illness, the lack of mental health programs and services for most people on the OMH caseload, the use of solitary confinement, and abusive conditions in the RMHTUs lead to pain, suffering, and most disturbingly mental health crisis, self-harm, and suicide. Unfortunately, individuals experiencing a mental health crisis are often not moved promptly to the Residential Crisis Treatment Program (RCTP). Moreover, the RCTP itself remains a punitive environment rather than a therapeutic place of support to help people stabilize. In the RCTP, security staff often subject people to verbal and sometimes physical abuse before, during, and/or after transfer. Lengths of stays in the RCTP are frequently substantially longer than the four-day goal that was included in the *Disability Advocates, Inc. v. New York State Office of Mental Health,* Private Settlement Agreement.[12] In fact, fewer and fewer people are being transferred from the RCTP to the Central New York Psychiatric Center to receive needed psychiatric care. Instead, people are often returned to the very same conditions, including solitary confinement, that led to the crisis in the first place, leading to repeated cycles between solitary confinement and the RCTP.

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[8] The RMHU, BHU, and TBU are not the only Residential Mental Health Treatment Units (RMHTUs) in DOCCS. The other RMHTUs include the Intermediate Care Program (ICP), the Intensive ICP, and the Transitional ICP.

[9] Individuals housed in an RMHTU "shall not be sanctioned with segregated confinement for misconduct on the unit, or removed from the unit and placed in segregated confinement, except in exceptional circumstances where such inmate's conduct poses a significant and unreasonable risk to the safety of inmates or staff, or to the security of the facility." N.Y. CORRECT. LAW § 401.5(a).

[10] *See* Jack Beck, Correctional Association of NY, *Testimony before the NYS Assembly's Corrections and Mental Health Committees*, Nov. 13, 2014, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2014/11/Testimony-by-Jack-Beck-11-13-2014-re-Mental-Health-Services-FINAL.pdf.

[11] *Id.*

[12] The Private Settlement Agreement (PSA) in *Disability Advocates, Inc. v. New York State Office of Mental Health,* 02 Civ. 4002 (GEL) (April 27, 2007) was the basis for the SHU Exclusion Law. The PSA stated at Par. 7:

> a. Length of Stay. The use of observation cells [RCTP] should be no longer in duration than necessary to deal with the mental health crisis which caused the inmate-patient to be placed in observation. Defendants' goal shall be to keep inmates in observation cells for no more than four (4) days and there shall be a presumption in favor of releasing inmates from observation cells within four (4) days. However, any decision to release an inmate from an observation cell after more or less than any particular number of days is a clinical judgment. All cases in which an inmate is held over seven days in observation shall be referred to the CNYPC Clinical Director of designee for consultation.

**Insufficient Discharge Planning Services**

During 2013, 3,661 individuals receiving mental health treatment were released from state prison.[13] Most people with mental illness released from state prison do not receive adequate assistance preparing for their release. The Community Orientation and Reentry Program (CORP) aims to provide comprehensive mental health discharge planning for people returning to New York City, but the program only has a capacity of 31. Eligible individuals spend approximately 90 days in the program preparing for their release. In 2013 only 113 people were admitted to CORP.

**The Need for Enhancing OMH Budget Allocations**

The Executive Budget includes much needed funding to expand services for people with mental illness released from state prison. We support this effort to improve discharge planning services. The budget, however, does not provide the funding required to address the deficiencies in the mental health care provided *during* incarceration; improving treatment is essential not only to meet the needs of individuals while they are in prison but also to prepare them to make the transition to the community upon release. People with mental illness who participate successfully in mental health treatment in prison will be more likely to engage in treatment in the community upon release. Success of reentry is integrally related to success of treatment inside the prisons.

To address the above concerns, OMH and DOCCS should expand treatment opportunities for people with mental illness in general population, protective custody, the RMHTUs and SHU (including keeplock and administrative segregation) to include cognitive behavioral therapy, trauma treatment, group therapy, and peer support. OMH needs dedicated staff to receive information from family members and to work more collaboratively with family members. The same ability to cooperate must be established with community treatment providers and advocates. All OMH staff should receive training from family members. DOCCS and OMH should also expand Integrated Dual Disorder Treatment (IDDT) for people with both mental health and substance abuse issues, and enhance OMH collaboration in all prison substance abuse programs. In turn, DOCCS along with OMH must create a more rehabilitative and therapeutic environment throughout RMHTUs and prisons generally, end staff abuse, decrease the use of disciplinary tickets and punitive sentences, and utilize non-punitive individualized therapeutic interventions in response to difficult behavior. Similarly, OMH along with DOCCS must recognize acts of self-harm as indications of crisis, not penalize them, enhance RCTP services, ensure a therapeutic environment free of staff abuse, house people in crisis in the least restrictive setting given their mental health needs, and hasten people's transfer to CNYPC whenever appropriate.

**The Need for Oversight**

For the legislature and the public to understand what takes place behind prison walls, outside oversight and reporting are essential. The Justice Center for the Protection of People with Special Needs (Justice Center) is responsible for monitoring prison mental health care and ensuring compliance with the SHU Exclusion Law. However, the Justice Center has not allocated the staff

[13] NYS Office of Mental Health, 2013Annual Corrections-Based Operations Statistical Report, July 10, 2014.

needed to provide effective oversight. Rather than assigning 14 full-time employees, which were projected to be required to carry out these monitoring duties, only four staff members are currently assigned.

The Justice Center reported completing nine SHU Compliance and Quality of Mental Health Care reviews between June 30, 2013 and June 30, 2014, but did not report *any* of its findings to the public or the legislature. Nor did the Justice Center testify at the November 13, 2014 Assembly hearing on mental illness in correctional settings. Without adequate staffing, the Justice Center cannot adequately monitor and report on prison mental health care or provide the oversight necessary to ensure that people with mental illness are diverted from SHU.[14]

The Executive Budget provides additional resources for the Justice Center, but it is unclear whether these resources will enhance the monitoring required by the SHU Exclusion Law. We encourage you to inquire into how the increased funding for the Justice Center will be allocated and require that the portion designated for these monitoring responsibilities be significantly increased.

**The Need for Legislation to End the Torture of Solitary Confinement**

In addition to increasing Mental Hygiene budget allocations to achieve these transformed conditions and overall environment, the legislature must act to end the torture of solitary confinement for people with pre-existing mental illness and for all people. The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act (A. 4401 / S. 2659) is a comprehensive approach to ending the torture of isolated confinement for all people. The bill requires the creation of rehabilitative and therapeutic units for individuals whose serious misconduct requires they be separated from the general prison population. In stark contrast to SHU, these secure residential rehabilitation units will offer programs, therapy, and support to address underlying treatment needs and causes of problematic behavior. The bill completely bans the placement of people with mental disabilities in isolated confinement and limits the maximum amount of time any person can spend in isolated confinement to 15 consecutive days or 20 days total in a 60-day period. New York must no longer subject any person, including those with pre-existing mental illness, to the torture of solitary confinement. MHASC encourages the legislature to pass the HALT Solitary Confinement Act without delay. MHASC also supports other legislation that would curtail the use of solitary confinement for people with mental illness and for all people, including A. 1346A, which would prohibit solitary for people with mental illness and young people under the age of 21, and A. 1347, which would prohibit solitary for pregnant women and new mothers.

**Conclusion**

Too many, and increasing numbers of, people with significant mental health needs are in our jails and prisons in large part because of an underfunded and under-resourced community mental health system, an overly punitive response to behavioral health issues, and a lack of alternatives to incarceration. Stronger community mental health services and preventive services which keep people with mental illness from ever penetrating the criminal justice system are needed. But for

[14] There are approximately 5,000 SHU beds in 39 prisons across the state.

as long as we continue to lock away in the state correctional system people with mental illness and as long as prison conditions themselves lead people to develop mental health needs, we must be concerned for the plight of those in our prisons who can easily be forgotten and ensure that their illnesses are treated and that they are not left to suffer their delusions, hallucinations, mania, anxiety, post-traumatic stress, and depression in solitary confinement and other abusive prison environments.